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7 **IN THE SUPREME COURT**

8 **STATE OF ARIZONA**
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11 In the Matter of

12 **PETITION TO AMEND RULE 74 OF**
13 **THE ARIZONA RULES OF FAMILY**
14 **LAW PROCEDURE.**
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Supreme Court Number R-15-0006

COMMENT TO PROPOSED
 AMENDMENTS TO RULE 74,
 ARFLP, CONCERNING
 PARENTING COORDINATION

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17 The undersigned, step-parent and business owner and spouse of a party to family court
18 proceedings who has been victim of unethical and abusive conduct by parenting coordinators in
19 Maricopa County, Arizona, submits the following comments opposing many of the proposed
20 changes to Rule 74, Arizona Rules of Family Law Procedure, as proposed in the Petition filed
21 January 8, 2015.

22 **BACKGROUND.**
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24 I am commenting on this proposed Rule change because I am a step-parent and spouse of a
25 party in Family Court who has suffered under the unethical, incompetent, and abusive conduct of
26 multiple parenting coordinators whose appointment and involvement served to worsen conflict

1 among the parents and, in the case of the most recent PC, directly threatened the welfare of my
2 eldest step-son.

3 **COMMENTS ABOUT THE PROPOSED CHANGES.**

4 It appears that the purpose of the 2014 Workgroup regarding Rule 74 was to address litigant
5 concerns about *PC fees, lack of recourse/ appeal process, qualifications of PCs, and scope of*
6 *authority.* (See the Petition to Amend filed 1/8/2015, page 2) Judge Barton, chair of that
7 Workgroup, reported that there were four to six complaints from litigants that led to the formation
8 of the Workgroup. [Email from Judge Barton to Family Law Executive Council and American
9 Academy of Matrimonial Lawyers, Arizona Chapter, dated December 6, 2014] It is important to
10 understand the incredible bravery of the litigants in coming forward, knowing the potential for
11 severe ramifications from their Family Court judge. For nearly four years I have shared the turmoil
12 of my husband, a highly decorated Navy veteran of two wars, as he battles in Family Court to
13 protect his four boys and his right as their father. When a PC was first appointed in my husband's
14 case years ago I thought it was an answer to prayer, given the stated goal of minimizing conflict.
15 Now I realize having suffered with my husband through two PCs that the reality is closer to Dante's
16 Eighth Circle of hell (Fraud).
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18 I agree with attorney Annette Burns that it appears that many of the proposed changes to the
19 Rule do not relate to any of the stated goals. It also appears that most of the changes remove what
20 few protections exist for parties while giving judges and PCs more unfettered latitude over already-
21 anguished parties involved in Family Court.
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25 **RECOMMENDATIONS FOR CHANGES NOT PROPOSED BY THE ADHOC**

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1 WORKGROUP

2 A key problem with the current Parenting Coordinator position and practice is that there are
3 no real protections for parties against abuse, especially early in the case history when children are
4 young and potential commentary by the PC can have long-lasting negative effects on a parent's life
5 with their children. I assert that the key need of a right revision of Rule 74 must focus on reducing
6 the latitude and authority of PCs, thereby reducing the tools so many PCs use to drive up costs.
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8 Some recommended changes to reduce the ability of PCs to abuse the authority granted
9 them and drive up costs for their own benefit, and in my husband's case, at a dear cost to his
10 children, his eldest son in particular:

- 11 1. *Require scientifically-based evidence that PCs do in fact achieve their stated reason for*
12 *existence, which is minimizing conflict among divorced parents.* For all the superficial
13 reasonability of appointing PCs, I am not aware of a single scientifically credible study
14 that demonstrates the effectiveness of PCs generally, much less individual PCs, at
15 minimizing conflict between divorced parents. At best, arguments of expediency are
16 used to justify PCs, including clearing Family Court Judges' dockets. The convenience
17 of judges, however, is no reason to perpetuate the appointment of PCs absent hard
18 evidence of their effectiveness. Judges, in particular Family Court Judges, have
19 sufficient latitude to resolve complaints from divorced parents without, in effect,
20 "punting" their responsibilities to third-parties who operate virtually unchecked.
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- 22 2. *Explicitly enumerate in the Rule that any party or participant in the PC process has the*
23 *explicit and irrevocable right to record any session, proceeding, or other contact.* It is a
24 common tactic of parenting coordinators to require parties to sign a participation
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1 agreement that includes a clause forbidding recording of any session. This is in fact
2 contrary to standard appointment orders in Maricopa that allow recording upon request
3 to the PC. But PCs are left by the appointing judges almost completely unsupervised in
4 any practical way, so this negation of the provision in rule is allowed to go on. The
5 status quo is especially dangerous considering the virtual “demigod” status conferred on
6 PCs by Family Court Judges who are alarmingly reliant on them. Ethical and capable
7 PCs should be happy to have an objective record of their conduct. The standard claim
8 that privacy is required to allow the parties to speak freely is completely hollow,
9 especially considering that no form of therapy is being performed in the PC process. My
10 husband’s experience with his second, current PC is a case in point. Over the course of
11 two years, this elderly man has feathered his nest by granting every frequent demand by
12 my husband’s ex wife and mother of their four boys for a meeting to discuss her latest
13 complaint against my husband—each time in direct violation to the Family Court
14 Judge’s explicit order that thoughtful, significant conversation between them occur
15 before invoking the PC. The worst negative impact of such hubris has been on my eldest
16 stepson, who has been living with my husband and me exclusively for two years
17 because of his mother’s treatment of him. This PC made not-so-thinly-veiled threats to
18 my husband that unless he convinces my eldest stepson to agree to reunify with his
19 mother, the PC may have to recommend out-of-state, third-party placement for him.
20 Most recently, this PC has jeopardized the continuity of care my step-son is receiving
21 from a private-sector therapist and recognized leader in her field. This expert agreed to
22 take my stepson’s case on the condition that she would only have to provide regular
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1 summaries to the Family Court about my stepson's progress—a stipulation agreed to by
2 my husband's Family Court Judge and the PC. Yet the PC recently demanded all of this
3 therapist's notes and records because he can. Only once my husband's attorney got
4 involved did this PC back down. This needless action wasted precious limited resources
5 that could have otherwise been directed to the ongoing care of my husband's eldest son.
6 Were recordings expressly allowed, and divorced parents duly notified of their right to
7 record sessions, PCs would think twice before behaving so recklessly. Best of all,
8 unfettered recording rights would dissuade unscrupulous providers from becoming PCs
9 in the first place.
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- 12 3. *Require that the Court maintain accurate, easily available records for each PC of*
13 *complaints and actual disciplinary actions.* Currently the Court simply lists PCs who
14 have completed a superficial class. There is no information whatsoever to gauge the
15 effectiveness of the PC or whether they have been subject to complaints or disciplinary
16 action. Most parties in Family Court are completely unfamiliar with resources that
17 might give insight into the behavior of a particular provider on the PC list. In effect, the
18 appointment of a PC is done in the dark and with little to no ability to correct a bad
19 appointment. Parties need more information to make good choices. Given that
20 appointment of a PC in practice is a process forced upon at least one party against their
21 will, it should be the responsibility of the Court to provide full and accurate information
22 about the people it is forcing upon the parties.
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- 24 4. *Create and maintain a public system of reviews of PCs.* A PC is forced upon at least one
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1 unwilling party in a Family Court case. Often the other party is happy for the
2 appointment and intends to use the PC as a means to lash out at the other and to use the
3 disparity in costs share as a weapon. Unfortunately, the PCs imposed in my husband's
4 case have been all too willing to participate, and at great cost mentally, physically, and
5 financially have made our situation worse, not better, as they encourage use of their
6 services to increase their billable hours. During the appointment process it is difficult if
7 not impossible for a party to get accurate, actionable information about a given PC, and
8 so must trust blindly in the opinion of their attorney, who often is personally involved
9 socially with the PCs on the list and does not disclose it to their client. Judges provide
10 no practical oversight of PCs and the fear of angering a Family Court judge who wields
11 vast powers that are in all practical senses unchecked prevents many from speaking out.
12 PCs complete the circle of misery by often forbidding recording sessions so there is no
13 evidence of their misconduct. Having a review system would potentially aid in
14 exposing the more egregiously inept and unethical PCs and help parties avoid using
15 them.
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- 18 5. *Require a minimum 30% cost share.* The PC process is often used by the lower earning
19 party as a financial weapon. In theory the appointing judge can and should thoughtfully
20 determine a cost share in each circumstance. In practice, Family Court judges take the
21 road of least resistance and simply repeat the cost share calculated in the child support
22 calculation. When there is a large disparity in earning, the party attributed with the
23 lower earnings uses the PCs service essentially for free. One could claim that being the
24 lower earner the party has fewer resources. In practice it is understood that such a
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1 person has access to a large amount of financial resources through parents, a new
2 spouse, or friends. In my own case the PC process was regularly used as an essentially
3 no-cost weapon to harass my husband. His first PC did all business through email, and
4 she allowed the boys' mother to write virtually unlimited complaints. My husband
5 would literally be copied on or directly receive 10-20 emails per day, all billed for by
6 the PC, and then be threatened with disciplinary action by the PC for not responding
7 immediately to each one. He works and would be fired if he spent the vast majority of
8 his time responding to his ex-wife's emails. Yet this PC, a female attorney with a long
9 history of being a PC in Maricopa County, continued this unethical behavior for months.
10 My husband found out after the appointment lapsed that this PC had also been having ex
11 parte communications with his ex wife in violation of the appointment order. She did
12 nothing to limit conflict and in fact worsened it by providing an essentially unlimited
13 venue for the boys' mother to complain about every perceived slight and non-
14 compliance on my part. Her tenure as PC made the co-parenting relationship far worse
15 than it would have been without her involvement.

16 My husband's second PC is a very old man with a psychology degree who is also
17 purportedly a well-respected member of the PC group. His involvement also served to
18 encourage rapid-fire complaints from the mother, who was attributed with substantially
19 lower income despite many elements that should have led the judge to impute
20 substantial income. Had a cost share of 30% or more been imposed on the boys'
21 mother, she would not have had a venue to air her baseless complaints against my
22 husband—who is forced to pay for this circus rather than direct his hard-earned
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resources toward his children.

6. Limit appointment of a PC to one year and require clear and convincing evidence of benefit to children for reappointment. PCs are in practice used by Family Court judges to avoid dealing with the issues between the parties. Rather than improving interaction between the parties, most PC use results in the use of the process by the party with lower attributed earning as a financial weapon to strike at the other. PCs encourage frequent use of their services to greatly profit off of this misery, and in practice Family Court judges provide no real oversight of the conduct of PCs. The rule should require limiting appointments to one year and requiring that clear and convincing evidence of benefit to the children from the previous appointment before reappointment for a year. If clear and convincing evidence of benefit to the children cannot be shown, then the PC serves no purpose for which the Court should employ under the Family Court's mandate. The cost of the PC is inherently a detriment to the children, so that cost should be outweighed by some provable, substantial benefit.
7. *Require that the appointment of a PC may only occur by agreement of the parties unless an evidentiary hearing on the specific benefits and the specific qualifications of the proposed PC is heard.* It is pro forma for Family Court judges to appoint PCs when faced with parties whose conflict they don't want to deal with. The involvement of the PC often worsens conflict by providing a low-cost venue to frequently harass the party with higher attributed earning. There is no practical oversight by the courts, as exemplified by the common comment from PCs that the court will simply agree to anything the PC says or recommends.

1 For parties in conflict, a PC will only be of practical help if the parties agree it will be
2 helpful without specific or implied coercion from the Court or attorneys. If the Court
3 still feels that there is a real benefit to the well-being of the children and not simply a
4 convenient diversion by the Court of issues it prefers not to deal with, then an
5 evidentiary hearing should be required to justify the desired outcome of such an
6 appointment and to hear evidence on whether or not the proposed PC would likely
7 accomplish those ends.
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- 9 8. *Limit fees and require billing to be on a fee-per-session basis.* In practice, a PC's
10 appointment is highly profitable and has no practical oversight, especially when the
11 parties are inexperienced in the Family Court process and politics. I have seen no
12 evidence over the past several years that involvement by either of the two highly
13 degreed and amply lettered PCs have had any positive impact on the relationship
14 between my husband and his ex wife. On the contrary, their co-parenting relationship
15 worsened significantly, which should not be surprising. After all, conflict is a highly
16 lucrative business—especially since PCs have a court-mandated clientele. For all my
17 husband's PCs' degrees, they intensified conflict between the parents. Moreover, for all
18 the supposed concern about the welfare of children, the allegedly "expert" Therapeutic
19 Interventionist recommended by my husband's second and current PC missed textbook
20 symptoms exhibited by my eldest stepson that were readily diagnosed once actual,
21 objective professionals outside of the Family Court Industrial Complex became
22 involved. In fact, this TI's recommendations ran utterly counter to what the real experts
23 advised, and precious healing time has been wasted attempting to correct the damage
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this TI inflicted on my eldest stepson. Sadly, this TI is still technically “on the case” and has worked with my husband’s current PC to try and continue billing for her “services”.

CONCLUSION

The proposed changes to Rule 74 do little to accomplish what should be their goal: To protect the rights of parties in Family Court against the egregious profiteering conduct of the many PCs who use their connections and experience to victimize the parties who are already in great turmoil and who do not have the knowledge or experience to fully protect their rights. Based on the years-long experience of my husband and eldest stepson with PCs and their allies, I feel as though my stepson has been victimized on an ongoing basis by the very Family Court appointed experts who are supposed to be minimizing conflict between parents and safeguarding children's welfare. I wouldn't wish Family Court as it operates now with so many PCs on my worst enemy, much less the people I love most in this world.

The best outcome, in my opinion, would be to eliminate the text of Rule 74 in its entirety and instead require compliance with Rule 53 of the Rules of Civil Procedure, which governs the appointment of "Masters". Given the rampant abuse for profit of the PC system and its use by judges to avoid their responsibilities, such a change is necessary and long overdue.

RESPECTFULLY SUBMITTED this 27th day of April, 2015.

/s/ VICKI ALGER

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